

## **Exhibit 2**

**From:** Travis Nichols

**Sent:** Wednesday, January 24, 2024 3:46 PM

**To:** 'Reece, Jennifer M CIV USN NAVFAC SW SAN CA (USA)' <[jennifer.m.reece6.civ@us.navy.mil](mailto:jennifer.m.reece6.civ@us.navy.mil)>

**Cc:** Kvendru, Renae A CIV USN NAVFAC SW SAN CA (USA) <[renae.a.kvendru.civ@us.navy.mil](mailto:renae.a.kvendru.civ@us.navy.mil)>; Slade, Chad A CIV USN NAVFAC SW SAN CA (USA) <[chad.a.slade.civ@us.navy.mil](mailto:chad.a.slade.civ@us.navy.mil)>; Koontz, Matthew T (Matt) CIV USN NAVFAC SW SAN CA (USA) <[matthew.t.koontz.civ@us.navy.mil](mailto:matthew.t.koontz.civ@us.navy.mil)>; Kevin Kurz <[kkurz@rqconstruction.com](mailto:kkurz@rqconstruction.com)>; Travis Nichols <[TNichols@rqconstruction.com](mailto:TNichols@rqconstruction.com)>

**Subject:** RE: Use of Project Labor Agreements (PLAs) for Federal Construction Projects

Hello Ms. Reece,

Per your request in your below email, please see the attached documents. Of course if you have any questions or would like to discuss further, our team would be very willing to continue in conversation.

Thank you kindly for your attention to this important matter,

Travis

**Travis Nichols**

**Director of Pursuits**

**D.** 760-631-7707

**M.** 760-622-2482

[tnichols@rqconstruction.com](mailto:tnichols@rqconstruction.com)

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**From:** Reece, Jennifer M CIV USN NAVFAC SW SAN CA (USA) <[jennifer.m.reece6.civ@us.navy.mil](mailto:jennifer.m.reece6.civ@us.navy.mil)>

**Sent:** Wednesday, January 17, 2024 12:25 PM

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**Subject:** Use of Project Labor Agreements (PLAs) for Federal Construction Projects

**Importance:** High

Good morning!

Effective January 22, 2024, Final Rule (FAR Case 2022-003), implements Executive Order (E.O.) 14063, Use of Project Labor Agreements (PLAs) for Federal Construction Projects, which **requires** the use of PLAs in large-scale (defined as **\$35 million or more**) Federal construction projects (including orders under indefinite-delivery indefinite quantity (IDIQ) contracts) within the United States unless an exception applies. **This requirement applies to new solicitations, including task or delivery orders, issued on or after January 22, 2024.**

NAVFAC policy is that when a PLA is required it shall be submitted **with proposals**. It is NAVFAC SW's intent to notify our MACC contractors when the PLA requirement will be included in a solicitation when we issue the draft Request for Proposal/ Offer, so that potential offerors have as much notice as possible to get PLAs in place prior to the proposal due date. While we can see waivers to PLA, the waivers are approved at the DASN level and we do not expect many to be approved unless there are extreme circumstances.

I understand that this PLA requirement on large-scale construction contracts will add additional requirements to each of you, but appreciate your continued interest and support to assist us with meeting our mission. I am interested in hearing from you all on how the PLA requirement will impact the time to prepare their proposal, and any other information you may have to share.

Thank you!

Very respectfully,  
Jennifer M. Reece  
Director, Planning, Design and Construction Contracting Core  
NAVFAC Southwest  
750 Pacific Highway  
San Diego, CA 92132  
**New Number - Office: (619) 705-4514**  
Mobile: (619) 917-8368  
[jennifer.m.reece6.civ@us.navy.mil](mailto:jennifer.m.reece6.civ@us.navy.mil)



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The Department of Defense (DoD) is in the process of implementing a Cybersecurity Maturity Model Certification (CMMC) for doing business with the DoD. When this certification is implemented, all companies will be required to obtain the appropriate CMMC certification level based on the amount of Controlled Unclassified Information your company handles or processes. Based on the current draft, you will be required to have the CMMC in order to be a prime or subcontractor on any DoD work. Please visit <https://www.acq.osd.mil/cmmc/> for additional information. This does not affect any current awards.

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## **AGC's PLA Survey - Summary Statistics**

President Biden has begun the regulatory process which will require federal prime contractors and subcontractors to engage in negotiation or agree to project labor agreements (PLAs) on federal construction projects valued at \$35 million or more. To inform the federal government and others as to the impact this regulation will have on contractors, AGC of America (AGC) conducted a Project Labor Agreement Survey. This survey was conducted from April 21<sup>st</sup> 2022 until May 5<sup>th</sup> 2022. Nearly 300 AGC member contractors responded to this survey.

Demographic data can be broken out along the following categories: Firms that had previous work experience under a government-mandated PLA, firms that had performed work for federally funded projects, firms that work under a Collective Bargaining Agreement, and firms that had bid or anticipated bidding on projects valued at \$35 million or more.

### **What Federal Construction Contractors have to say:**

**78%** of respondents selected that they perform, or recently performed, federal construction projects as either a prime contractor or subcontractor. These respondents were separated out and asked what impact E.O. 14063, if any, would have on their willingness and ability to execute federal construction projects.

- **Raise or Lower Cost** – **88%** responded it would **Raise costs**, compared to **0%** responded it would **Lower costs**.
- **Harder or Easier to Subcontract with Small Disadvantaged Businesses** (e.g. VOSB, SDVOSB, SDB, WOSB, HUBZone) – **82%** responded it would be **Harder**, compared to **5%** responded it would be **Easier**.
- **Harder or Easier to find Workers and/or Subcontractors** – **78%** responded it would be **Harder**, compared to **3%** responded it would be **Easier**.
- **Lengthen or Shorten the time to complete projects** – **73%** responded it would **Lengthen**, compared to **1%** responded it would **Shorten**.
- Only **6%** responded **No Impact** and **3%** responded **Unsure** as to whether E.O. 14063 would have an impact on federal construction projects.

### **What Contractors that have worked under a Government-Mandated PLA have to say:**

**35%** of survey respondents had performed work under a government-mandated PLA. These respondents were separated out and asked whether a government-mandated PLA made it easier or harder for them or their subcontractors to find workers to keep projects on schedule and within budget.

- **67%**, or two-thirds, responded that a government-mandated PLA made it **Harder** to find workers needed to keep their projects on schedule and within budget.



- **10%** responded that a government-mandated PLA make it **Easier**.
- **19%** responded **No Difference**, and **3%** responded **Unsure**.

**What Contractors Operating under a Collective Bargaining Agreement have to say:**

**38%** of survey respondents described their company as Sometimes (23%) or Always (16%) operating under a Collective Bargaining Agreement (CBA). These respondents were separated out and asked what effect E.O. 14063 would have on union workforce supply if it were applied on federal construction projects of \$35 million or more.

- **83%** responded the project **Will not** have enough union workers to guarantee on time and on budget delivery because the labor unions are facing shortages among their own ranks.
- **17%** responded the project **Will** have a sufficient number of union workers to guarantee on time and on budget delivery because the labor unions have enough workers ready and available to supply the project.

**Additional Highlights from this Survey:**

- **Interest in bidding** – **73%** responded that they are **Not interested** in bidding if there is a government-mandated PLA on a federal construction project, compared to **27%** that responded they are **Still interested** in bidding.
- **Small Businesses** – **41%** responded that their company is a **Small business** under the Small Business Administration's Small Business Size Standard.



Jennifer M. Reece, Director, Planning, Design and Construction Contracting Core of NAVFAC SW:

In response to your recent NAVFAC SW communications related to the implementation of Executive Order (E.O.) 14063, Use of Project Labor Agreements (PLAs) for Federal Construction Projects, in large-scale (defined as \$35 million or more) Federal construction projects (including orders under indefinite-delivery indefinite quantity (IDIQ) contracts) within the United States unless an exception applies, RQ Construction, LLC offers the following feedback that reflects our own experience, as well as insights gathered from knowledgeable and reputable market resources such as Associated General Contractors of America (AGC) and Associated Builders and Contractors (ABC):

- Overall responsiveness for the Government's Mission readiness and delivery of critical TOs and Projects will be impacted negatively due to the PLA mandate.
- Timing for delivering TOs and projects will be extended; (i) solicitations to meet Request for Proposal timing will be extended; and (ii) Project delivery and Contract Completion Dates as a result of a PLA will be extended.
- Funding for TOs and Projects will be impacted with higher costs and less competition as the Government would receive significantly less interest and fewer bids under a PLA.
- The majority of prime contractors and subcontractors would need to raise costs as a result of a PLA due to not being able to leverage most of the existing labor workforce, inefficient union work rules, loss of productivity, and increased compliance-related burdens, including Attorney fees and delay costs.
- Labor-management stability would become volatile under the terms and conditions within a PLA and the unknown effect of local Collective Bargaining Agreements when not addressed specifically in the PLA, creating undue management and administrative hardship including the potential multiemployer pension plan withdrawal liability.
- Significantly fewer qualified and specialized subcontractors will participate in PLA projects, which will increase costs and diminish quality.
- Small Business participation would become inconceivable to consider or meet with 97% of Small Businesses and Small Business Subsets reporting they are less likely to bid PLA Projects.
- Skilled labor shortages would be imminent.
- With no less than 84% and up to 93% of the reported workforce being non-union within the SW Region, use of a PLA would hinder recruiting and retaining skilled workforce.

With current litigation in process, how is NAVFAC approaching exceptions?

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read 'George H. Rogers III'.

George H. Rogers III  
Chief Executive Officer  
RQ Construction, LLC



# **What Biden's Pro-PLA Final Rule and New Policies Mean for ABC Contractors**

**ABC Members-Only Webinar**  
**January 17, 2024**



## Brought to you by ABC's Strategic Partners



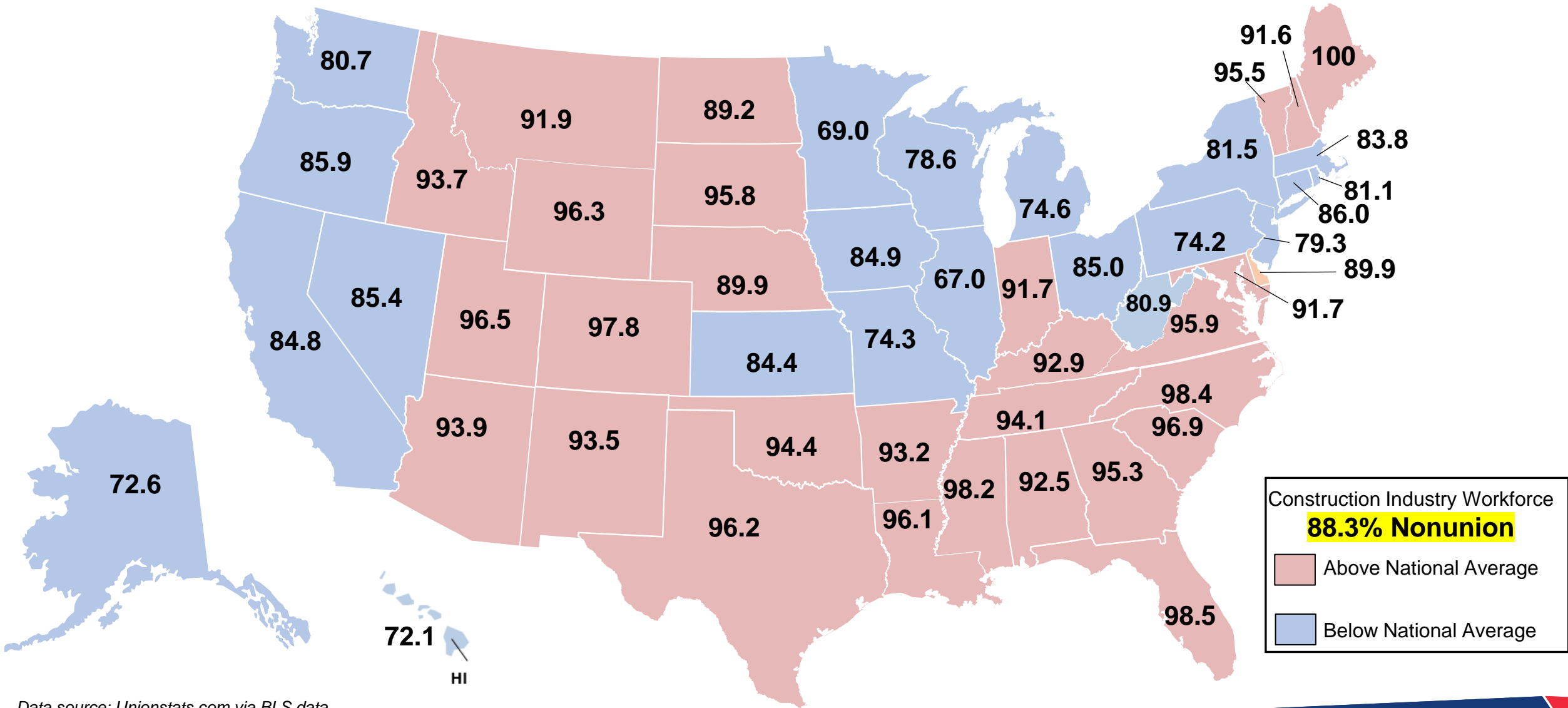
# Overview of Government-Mandated Project Labor Agreements



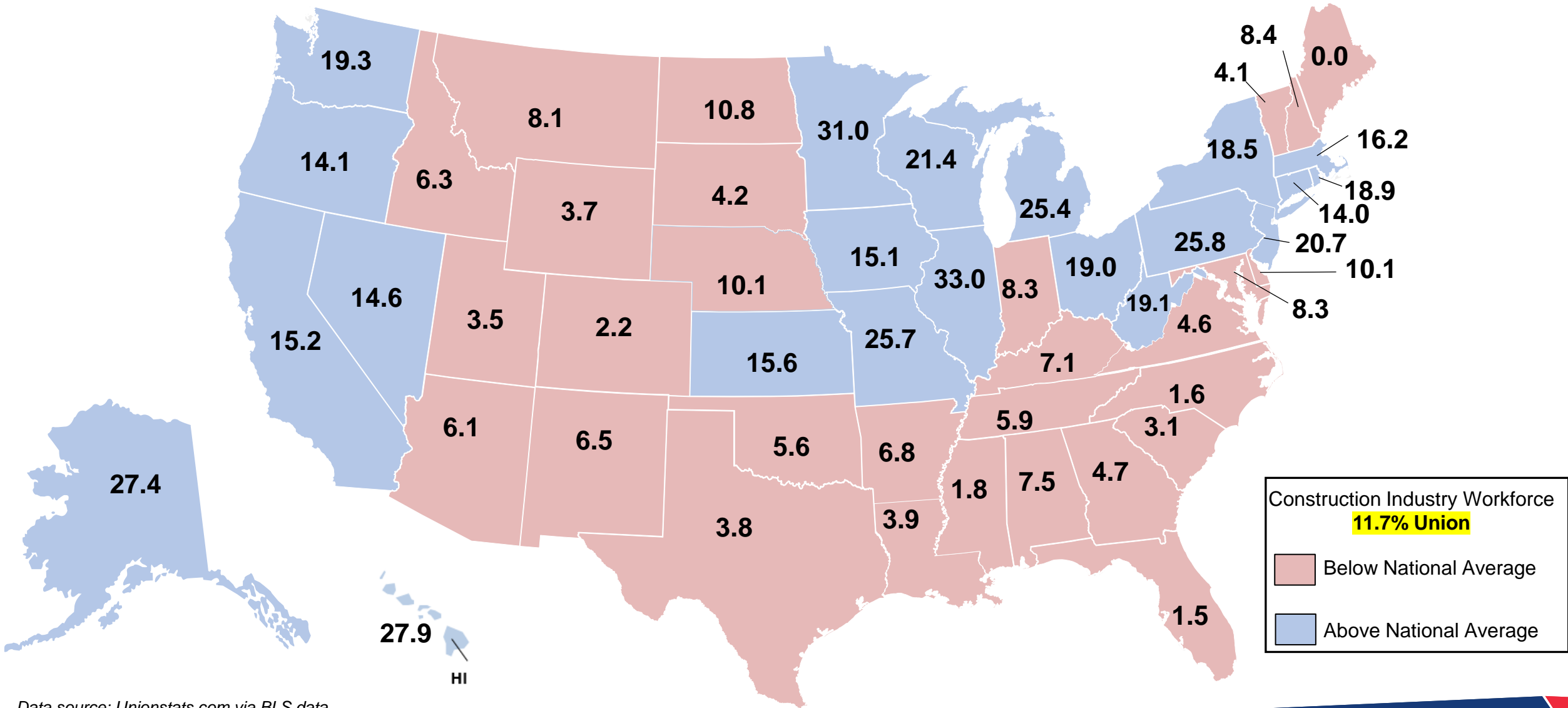
# GOVERNMENT-MANDATED PLA MECHANICS

- ✓ **PLA = A jobsite-specific (or multi-jobsite) collective bargaining agreement.**
- ✓ **Mandated or given preference by a government entity in a procurement (usually required via policy/EO/legislation/ordinance prior to issuance of bid documents) for construction services.**
- ✓ **Contractors must negotiate/execute PLA with construction unions to bid/win contracts.**
- ✓ **Local unions with jurisdiction on a project—sometimes 20+ crafts—are signatory to the PLA.**
- ✓ **Applies to all general contractors and subcontractors on a project, who must agree to the PLA terms and conditions via a letter of assent.**
- ✓ **The PLA is a master CBA—it streamlines each union’s individual CBA with respect to certain terms and conditions—but defers to local CBAs when not addressed specifically in the PLA. So stakeholders must review all relevant CBAs and the PLA.**
- ✓ **PLA sets terms related to union strikes/labor disruptions, union jurisdiction and dispute resolution, work hours, wages/benefits, health and safety, apprenticeship and other items, many of which discourage competition from quality contractors.**
- ✓ **PLAs typically contain terms that harm union-free contractors and employees.**

# STATE-BY-STATE CONSTRUCTION INDUSTRY NONUNION WORKFORCE DENSITY (2022)



# STATE-BY-STATE CONSTRUCTION INDUSTRY UNION WORKFORCE DENSITY (2022)



# GOVERNMENT-MANDATED PLAS REDUCE COMPETITION



A project labor agreement mandate **artificially creates monopolies** for unionized contractors and union trade workers on taxpayer-funded construction contracts.



PLAs **discourage competition** from quality local contractors and local construction professionals not affiliated with unions.



PLAs often discourage most local merit shop contractors from bidding because PLAs can **harm a company's existing workforce that chooses not to belong to a union.**

# GOVERNMENT-MANDATED PLAS REDUCE COMPETITION



PLAs require contractors to obtain **most or all employees from union hiring halls and union apprenticeship programs.** Union labor may not be local.



PLAs **force** contractors and employees to follow inefficient and counterproductive union job classifications and work rules in local union collective bargaining agreements. This adds **additional costs** because it eliminates multiskilling and is a source of bureaucratic frustration for employees and contractors.



PLAs force contractors to pay into union benefit plans, including multiemployer union pension plans that can **put merit shop contractors at risk of huge pension withdrawal liabilities**, especially if the plans are underfunded.

# GOVERNMENT-MANDATED HARM NONUNION EMPLOYEES



PLAs force existing local employees to accept union representation as a condition of employment, **without a union representation election.**



Nonunion employees are **required to pay nonrefundable union dues** and/or join a union in order to work on a PLA project and receive earned benefits.



PLAs require nonsignatory contractors to pay their employees' health and welfare fringe benefits to union benefit funds, **even if they have existing, high-quality plans**; Contractors pay into existing plans and "double" benefits costs are estimated at +35%.



Nonunion employees **lose these benefits and extra fringe benefits compensation** unless they join a union; they experience a 34% reduction in pay and lose benefits due to PLA wage theft.



# GOVERNMENT-MANDATED HARM NONUNION EMPLOYEES

## PLAs = Local Wage Theft

Government-mandated PLAs steal roughly  
**34% of wages and benefits** from workers on a  
PLA project if they don't belong to a union.



Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers

**Instead of Reform, Policymakers  
Want to Perpetuate the Broken System**



by  
**Dr. John R. McGowan, Ph.D., CPA**  
Director of Tax Strategy at Archford Accounting  
Retired Professor of Accounting at Saint Louis University

October 2021

# GOVERNMENT-MANDATED PLAS INCREASE COSTS



Government-mandated PLAs **increase** affordable housing and school construction costs by **12% to 20%**, on average.



Studies were conducted in **California, Connecticut, New Jersey, Ohio, Massachusetts and New York** on hundreds of school and affordable housing projects built with and without PLA mandates.



The Obama administration's U.S. DOL Job Corps Center in New Hampshire had **three times as many bidders and saved 16% without PLA mandate.**



Studies available at **TheTruthAboutPLAs.com** and **BuildAmericaLocal.com.**

# HOW DO GOVERNMENT-MANDATED PLAS INCREASE COSTS BY 12% TO 20%?



## Labor costs

- Risk: The best contractors can't use most or all of existing workforce.
- Inefficient union work rules and lost productivity.
- Double health and pension costs to any nonunion contractors who pursue PLA projects.



## Compliance costs

- Attorney costs and delays complying with PLAs, collective bargaining agreements referenced in the PLA, and union benefits plans.
- Risk: Multiemployer pension plan withdrawal liability.



## Competitive costs

- Economic theory in competitive bidding.
- Correlation between less competition and higher labor and construction costs.
- Prime contractors: Fewer quality subcontractors to choose from.

# FAIR AND OPEN COMPETITION: A WIN-WIN FOR TAXPAYERS AND THE ECONOMY



Inclusive policy benefiting all of America's construction industry.



Results in more long-lasting, high-quality construction projects built at the best possible price.



Ensures taxpayer dollars are spent effectively, delivering more projects and jobs for the investment.



Helps businesses, including diverse, local, small and MWDBE firms and workers compete and grow.



Incentivizes and rewards productivity, innovation and value creation.



Stimulates job growth, career enhancement and opportunity for all.

# **Federal and State Policies on Government- Mandated Project Labor Agreements**



# BIDEN: I'M THE "MOST PRO-UNION PRESIDENT"

WORK

**Biden promises to be 'the most pro-union president'—and union members in Congress are optimistic**



Published Wed, Dec 2 2020·9:15 AM EST • Updated Wed, Dec 2 2020·10:05 PM EST

**Biden stakes claim to being America's most pro-union president ever**

The Washington Post

**Biden's vow to be 'most pro-union president' tested in first year**

NEWS

*"You know, you've heard me say many times: I intend to be the most pro-union President leading the most pro-union administration in American history." - Pres. Joe Biden, 9/8/21*



**Joe Biden** ✓  
@JoeBiden

I make no apologies for being the most pro-union president in American history.

2:32 PM · 4/20/23 · **29.8M** Views

BRIEFING ROOM

**FACT SHEET: Executive Order Establishing the White House Task Force on Worker Organizing and Empowerment**



APRIL 26, 2021 • STATEMENTS AND RELEASES

**Biden as 'Most Pro-Union President' Shows in House Spending Bill**

Nov. 5, 2021, 12:58 PM

**Bloomberg Law**





# ABC-LED FEDERAL COALITION: #NOPLAS IN INFRASTRUCTURE BILL AND ALL LEGISLATION

**BuildAmericaLocal.com** Coalition Website & Anti-PLA Campaign

Don't Let Project Labor Agreement Mandates  
Stand in the Way of Rebuilding America.

**LET'S WORK TOGETHER TO REBUILD  
AMERICA'S INFRASTRUCTURE.**

**Successful  
#NoPLAs  
Campaign**

**AMERICA  
IS TURNING THE CO**

American Council of Engineering Companies  
American Fire Sprinkler Association  
American Pipeline Contractors Association  
American Road and Transportation Builders Association  
Associated Builders and Contractors  
Business Coalition for Fair Competition  
Construction Industry Round Table  
Electronic Security Association  
Independent Electrical Contractors  
National Association of Home Builders  
National Black Chamber of Commerce  
NFIB  
National Ready Mixed Concrete Association  
National Utility Contractors Association  
Power and Communication Contractors Association  
Small Business and Entrepreneurship Council  
United States Hispanic Chamber of Commerce



**ACTION CENTER**

United States Senate  
WASHINGTON, DC 20510

March 7, 2022

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Biden:

We write to express our strong opposition to your administration's efforts to encourage and require project labor agreements (PLAs) on federal and federally assisted construction contracts funded by taxpayer citizens in our states. Executive Order 14063, which requires PLAs on federal construction contracts exceeding \$35 million, will undermine taxpayer investment in public works projects financed by the American Rescue Plan Act, the Infrastructure Investments and Jobs Act, and additional legislation passed by Congress and signed into law free from language requiring or encouraging the use of PLAs.

Currently, 87.4% of the U.S. construction workforce does not belong to a union. Mandating PLAs will prevent qualified contractors from fairly competing for contracts on taxpayer-funded projects. These mandates will also deny critical construction jobs to local workers and small businesses and increase construction costs. A fair and open bidding process for federal construction projects would guarantee the best value for hardworking taxpayers located in all geographies.

In addition, a variety of federal laws already promote standards in federal contracting without forcing bidders. For these reasons, when given the option, federal agencies should not mandate PLAs on federal projects. Large-scale federal construction projects built since President Trump took office have not experienced delays or cost overruns to encourage the use of PLAs on federal projects of \$25 million or more. However, while we oppose federal mandates for PLAs, we support the ability to award contracts to businesses that choose to use PLAs.

Twenty-four states have enacted measures that ensure a fair and open decision-making process that will lead to better investment in more construction industry jobs, a vital part of economic recovery. Favoritism in the procurement of construction projects costs taxpayers dollars. Further, they allow markets to determine the best value for taxpayers. We are also concerned that your administration's projects that are procured by state and local governments will be subject to legislation that does not reference PLAs.

*Kevin Cramer*  
Kevin Cramer  
United States Senator

*Cynthia M. Lummis*  
Cynthia M. Lummis  
United States Senator

*James E. Risch*  
James E. Risch  
United States Senator

*Roger Marshall*  
Roger Marshall  
United States Senator

*Jerry Moran*  
Jerry Moran  
United States Senator

*John Barrasso*  
John Barrasso, M.D.  
United States Senator

CC: The Honorable Maria Cantwell, Chair, Senate Committee on Commerce, Science, and Transportation  
The Honorable Roger Wicker, Ranking Member, Senate Committee on Commerce, Science, and Transportation

# PRESIDENT BIDEN'S PRO-PLA POLICIES AND EO

## Executive Order 14063, Signed Feb. 4, 2022, Effective Jan. 22, 2024



- ☐ EO 14063: PLA requirement applies to all federal construction contracts of \$35M (not \$25M) or more. Estimated impact: 120 contracts totaling \$10-14B per year.
- ☐ May make it difficult for federal agency contracting officers to opt out of mandating PLAs.
- ☐ FAR proposed rule issued Aug. 19, 2022; comments closed Oct. 18, 2022 (7,500 anti-rule comments filed); and final rule rescinding the Obama pro-PLA policy issued Dec. 22, 2023.
- ☐ Does not apply to federally assisted projects, but \$260B+ of federal agency grant programs are pushing PLAs on private, state and local projects receiving federal dollars. See [abc.org/PLAGrants](https://www.abc.org/PLAGrants)



### ABC will continue its fight against government-mandated PLAs by:

- ☐ Keeping this issue radioactive
- ☐ Leading the federal industry coalition at BuildAmericaLocal.com
- ☐ Supporting the Fair and Open Competition Act (H.R. 1209/S. 537), introduced by Sen. Todd Young, R-Ind., and Rep. James Comer, R-Ky. on Feb. 27.
- ☐ Public relations campaigns
- ☐ Grassroots advocacy
- ☐ Responding to federal agency PLA surveys
- ☐ Broad legal challenge/GAO bid protests



# PRESIDENT BIDEN'S PRO-PLA EO BLASTED

## The Washington Times

Labor unions see rewards in Biden executive order on construction projects

## WSJ | OPINION

Home World U.S. Politics Economy Business Tech Markets Opinion Books & Arts

## Biden Says No Union, No Contract

A new White House plan would steer federal funds toward Big Labor.

By [The Editorial Board](#) [Follow](#)  
Feb. 9, 2022 6:36 pm ET

Construction firms hit Biden labor agreement plan that unions praise



Perspective by [Joe Davidson](#)  
Columnist  
April 14, 2022 at 6:00 a.m. EDT

The Washington Post

## WSJ | OPINION

Home World U.S. Politics Economy Business Tech Markets Opinion Books & Arts Real Estate Life & Work

OPINION | COMMENTARY

## Infrastructure Law Becomes a Biden Union Giveaway

A new executive order grants closed shops a monopoly on contracts greater than \$35 million.

By Ben Brubeck  
Feb. 9, 2022 5:05 pm ET

[SAVE](#) [PRINT](#) [TEXT](#)



INFRASTRUCTURE - Published April 18

Biden's executive order on project labor agreements a 'lose-lose' policy:  
Construction industry insider

Biden's executive order on project labor agreements draws criticism from those in construction industry

THE HILL

## Biden is pro-union, not pro-worker

BY REP. VIRGINIA FOXX (R-N.C.), OPINION CONTRIBUTOR — 02/11/22 10:30 AM EST  
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

February 16, 2022  
10:00 AM EST



Construction industry groups oppose Biden's executive order in letter to White House



SHARE



TWEET

## Construction industry pushes back on Biden order for labor agreements

BY KARL EVERS-HILLSTROM - 02/16/22 11:20 AM EST

76 COMMENTS

THE HILL



18 GOP Governors Oppose Joe Biden's Attempts To Interfere With America's Construction Industry

April 26, 2022 | General, RGA News



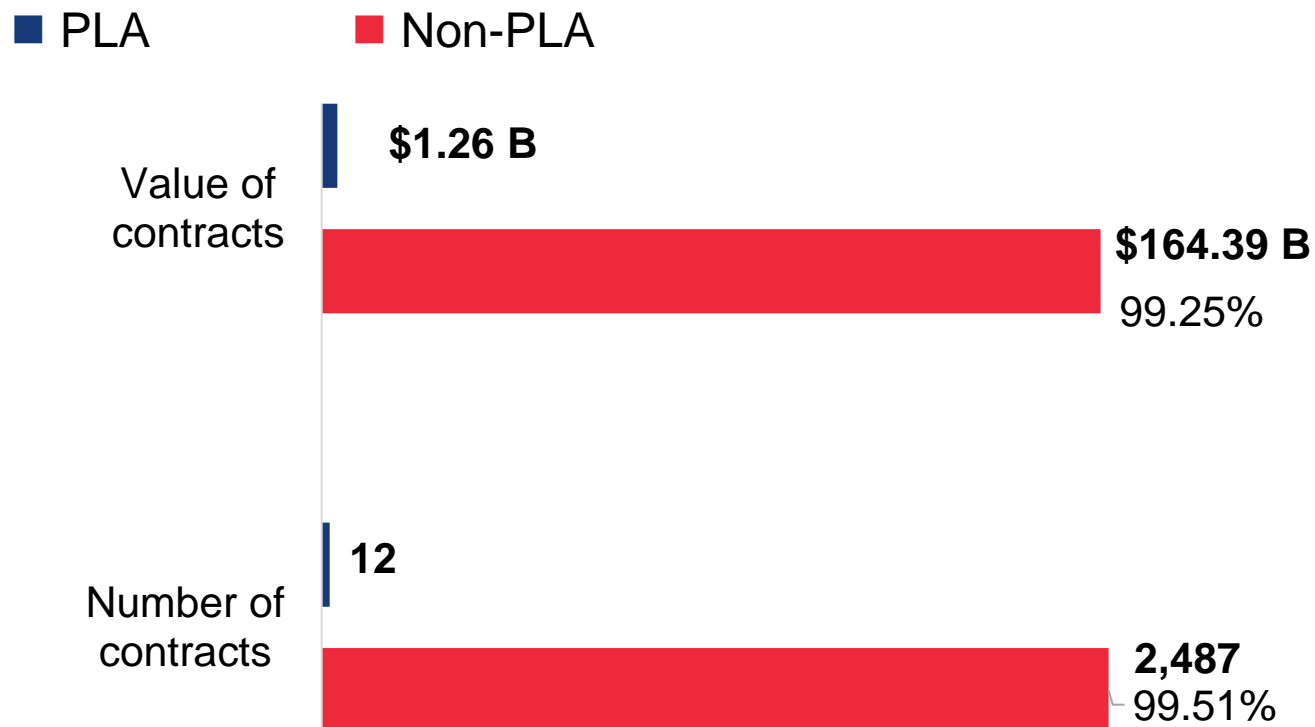
Stateline

## States to Feds: Don't Tell Us How to Spend Infrastructure Money

STATELINE ARTICLE | February 17, 2022 | By: [Alex Brown](#) | Read time: 5 min

# PLA MANDATES ON FEDERAL CONTRACTS

## Total value of PLA mandate/preference contracts greater than \$25M, FY2009-FY2023



- Non-GMPLA contracts far outnumber GMPLA contracts by value (99.25%) and number of contracts (99.51%) on \$165.63B of federal projects greater than \$25M.
- There have been no federal GMPLAs during the Trump and Biden administrations.

Source: USASpending.gov (accessed 12/4/23) cross-referenced with known list of federal government-mandated PLAs

Case 6:24-cv-00037-DGJ-DJA Document 32-11 Filed 02/28/24 Page 27 of 58 PageID #: 1050

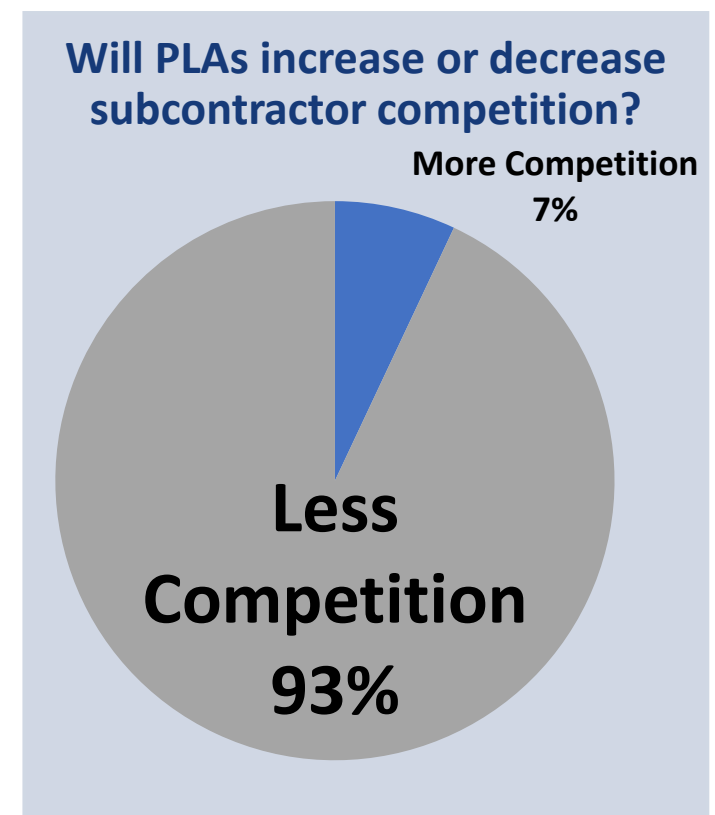
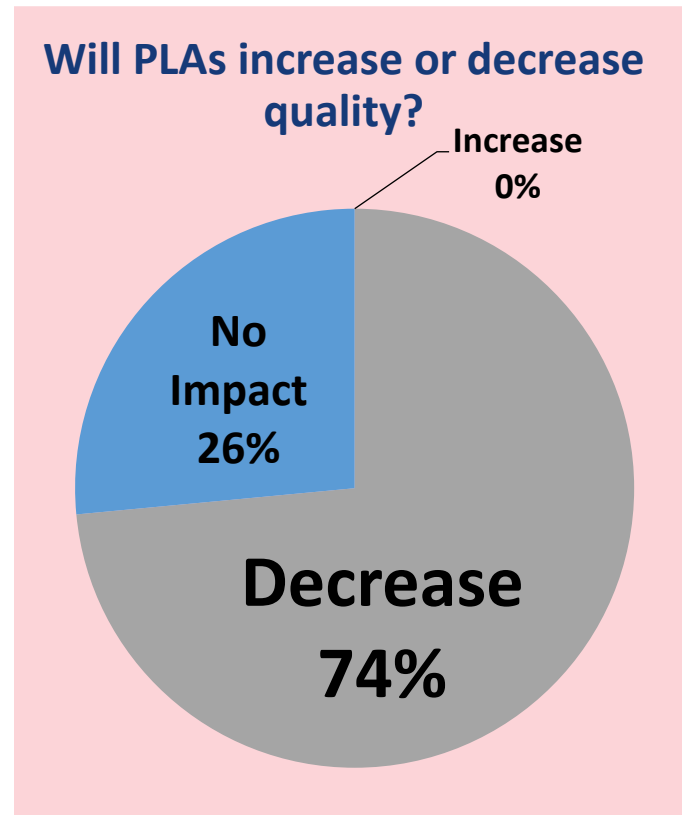
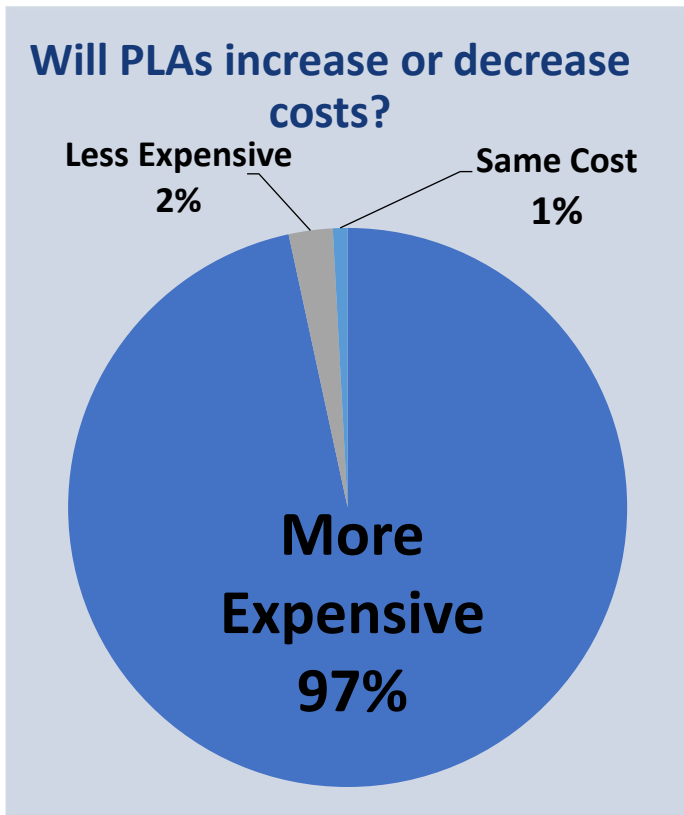
# ABC MEMBERS WON THE MAJORITY OF LARGE-SCALE FEDERAL CONTRACTS >\$25M, FY2009-FY2023, BY VALUE

	# of Contracts	Percent of # of Contracts	Value (in \$ billions)	Percent of Total Value
ABC	1,196	47.86%	\$87.65	53%
Non-ABC	1,303	52.14%	\$77.98	47%
Total	2,499	100%	\$165.63	100%

Source: USASpending.gov (accessed 12/4/23) cross-referenced with ABC membership as of 12/5/23.

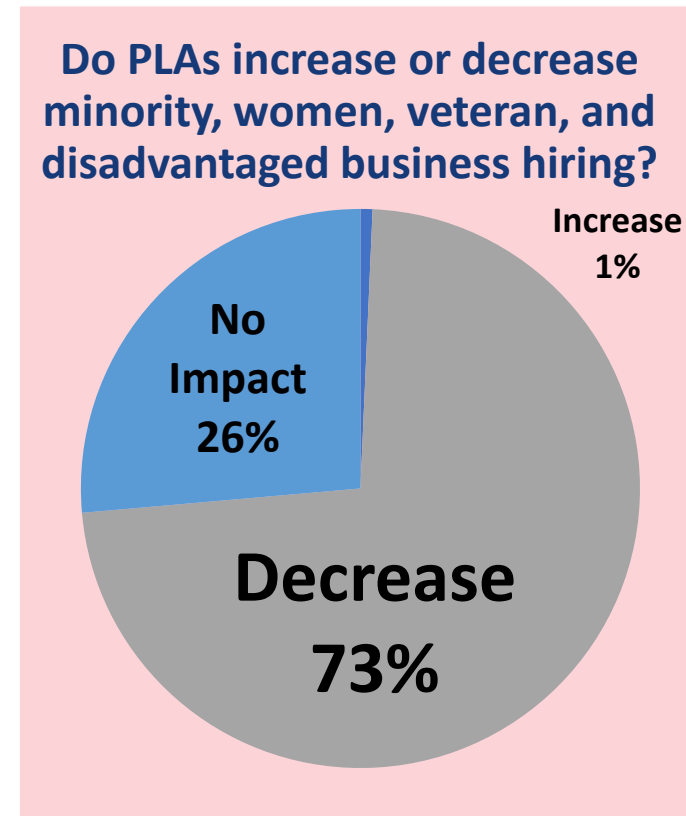
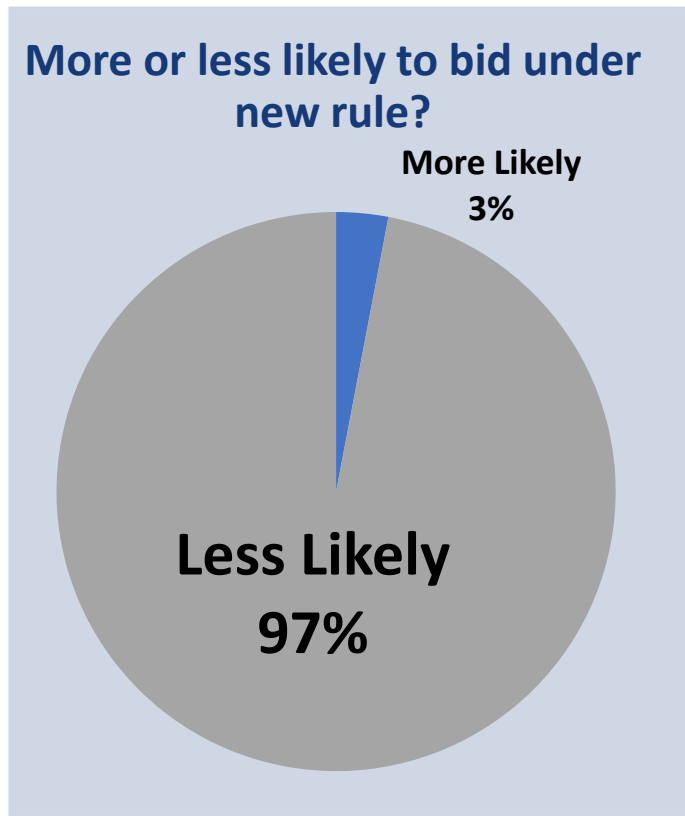
# Federal Contractors Believe Proposed PLA Rule Will Increase Costs, Reduce Competition and Quality

Responses to the following questions from participants who self-identified as federal contractors:



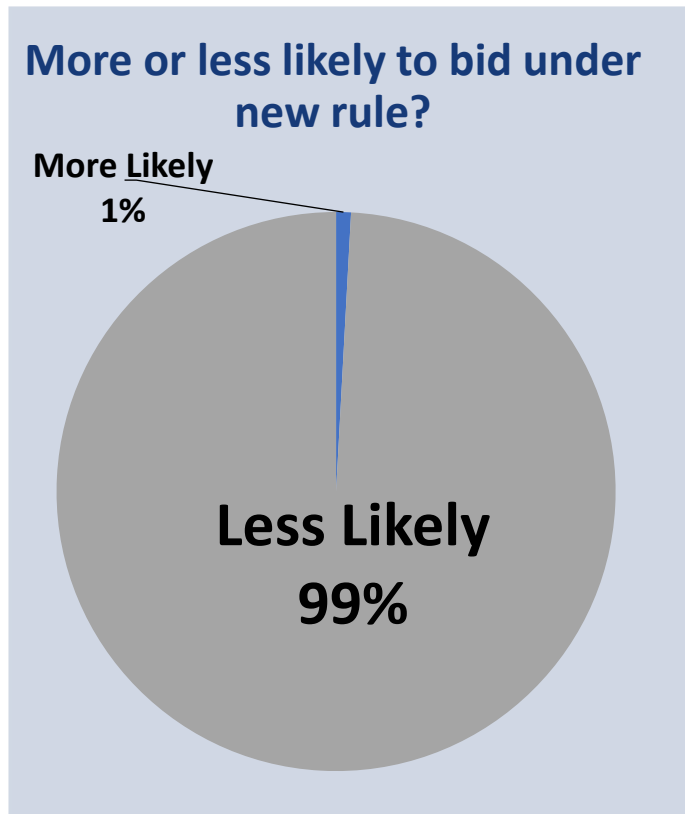
# Small Business Federal Contractors Less Likely to Bid on Federal Contracts Under Proposed PLA Rule; Believe It Will Decrease Minority, Women, Veteran and Disadvantaged Businesses Hiring

Responses to the following questions from participants who self-identified as federal contractors that qualify as small businesses under SBA's size standards:



# Proposed PLA Rule Discourages Competition From Firms Who Are Not Federal Contractors

Responses from non-federal contractors to the question, “Based on what you know about the FAR Council’s proposed rule, which would require government-mandated PLAs for all federal contracts over \$35 million with limited exceptions, if this rule is finalized would you be more or less likely to begin or continue bidding on federal contracts in the future?”



“

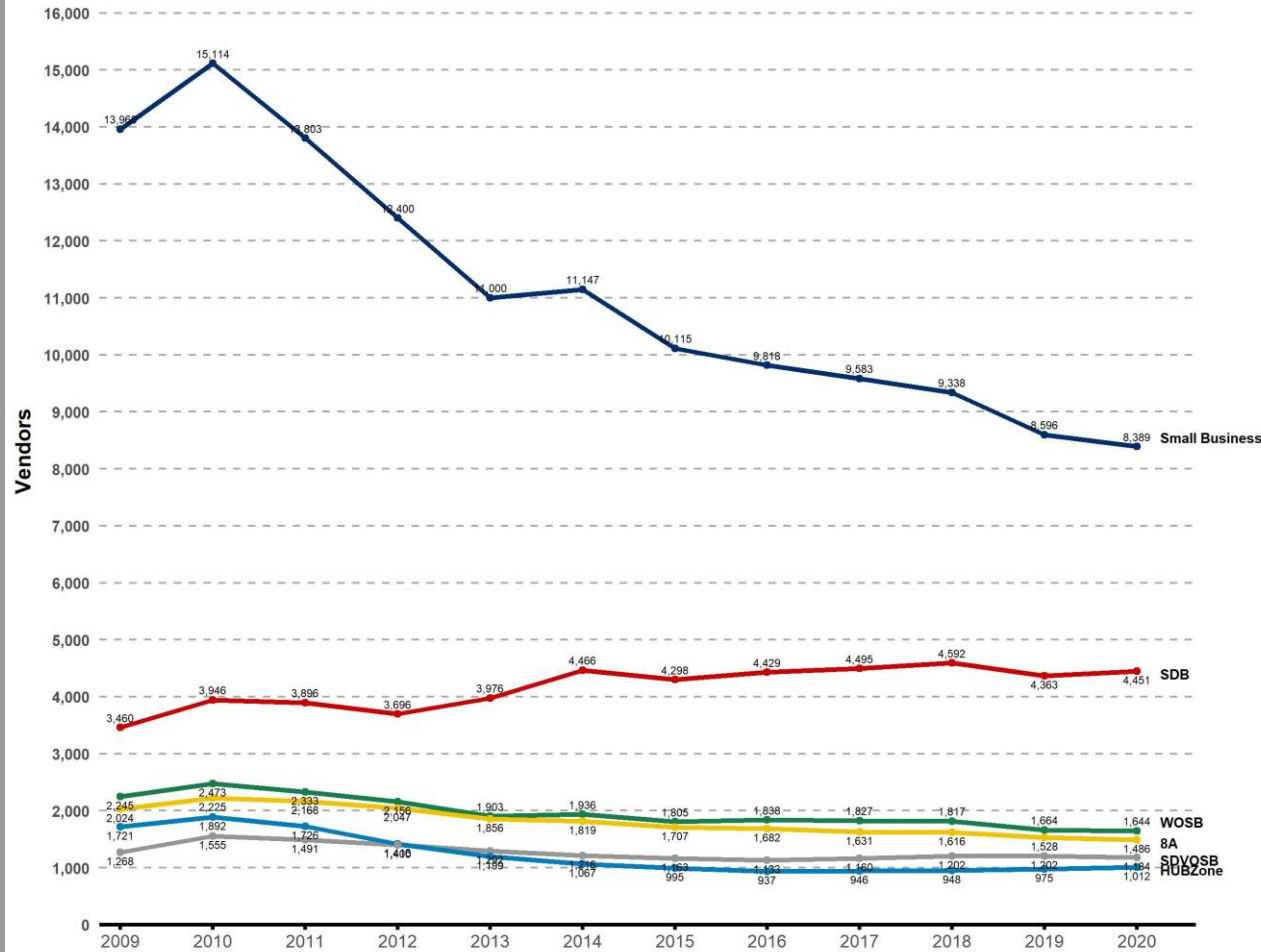
PLAs take away from the rights of business owners and employees who have chosen not to affiliate with labor organizations. It restricts employee choice by forcing affiliation.”



# Number of Construction Industry Small Businesses Awarded Federal Contracts Declined 60% From 2010-2020

Case 6:24-cv-00037-DCJ-DJA Document 32-1 Filed 02/28/24 Page 31 of 58 PageID #: 1054

Vendor Counts of Small Businesses in Construction



\*Note: The Micro Purchase Threshold (MPT) changed from \$3,500 to \$10,000 in 2018. Agency adoption varied. This means some small businesses who received contracts in the \$3,500 - \$10,000 range may not be reflected in vendor counts post 2018.

Source: Small Business Goaling Report, FY09 - FY20

Vendor Counts of Small Businesses in Construction

FY	Small Business	SDB	SDVOSB	HUBZone	WOSB	8A	SBGR
2009	13960	3460	1268	1721	2245	2024	16186
2010	15114	3946	1555	1892	2473	2225	17644
2011	13803	3896	1491	1726	2333	2168	16335
2012	12400	3696	1400	1416	2156	2047	14510
2013	11000	3976	1292	1199	1903	1856	12690
2014	11147	4466	1216	1067	1936	1819	12706
2015	10115	4298	1163	995	1805	1707	11724
2016	9818	4429	1133	937	1838	1682	12465
2017	9583	4495	1160	946	1827	1631	12146
2018	9338	4592	1202	948	1817	1616	11424
2019	8596	4363	1202	975	1664	1528	10504
2020	8389	4451	1184	1012	1644	1486	10191



# EO 14063 FINAL RULE OVERVIEW

## Scope

- ☐ PLAs required on all **federal** agency contracts for construction services of \$35M or more, including IDIQ contracts, effective Jan. 22, 2024.
- ☐ PLA applies to all project prime contractors and subcontractors.
- ☐ PLAs can be mandated on contracts less than \$35M, if justified.
- ☐ Rule does not apply to federally assisted projects procured by private owners and state and local governments (“this final rule applies to FAR-based contracts; however, nothing in this rule precludes contractors working on grant-funded projects from entering into PLAs.” See Sec. 7 of EO).
- ☐ FAR Council estimated rule will apply to 120 federal contracts totaling \$10-14B per year.
- ☐ May not apply to all contracts as there is a PLA exception provision.
- ☐ Federal Contracting officer training?





# EO 14063 FINAL RULE OVERVIEW

***Q: What terms are required in the PLA?***

***A: “Sec. 4. Requirements of Project Labor Agreements. Any project labor agreement reached pursuant to this order shall:***

***(a) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;***

***(b) allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;***

***(c) contain guarantees against strikes, lockouts, and similar job disruptions;***

***(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;***

***(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and***

***(f) fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.”***

# EO 14063 FINAL RULE OVERVIEW

## ***Q: Are there exceptions to the blanket PLA mandate policy?***

**A:** Yes, exceptions to blanket PLA mandate policy are permitted in Section 5 of the EO and rule if “(1) requiring the PLA on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

- (A) The project is of short duration and lacks operational complexity.
- (B) The project will involve only one craft or trade.
- (C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.
- (D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.”

# EO 14063 FINAL RULE OVERVIEW

***Q: How will such factors be considered by contracting officers?***

**A:** “(2) Considerations. When determining whether the exception in paragraph (d)(1)(ii) of this section applies, contracting officers shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement (e.g., costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.”

***Q: What topics will be considered in market research?***

**A:** “(2) Contracting officers conducting market research for Federal construction contracts, valued at or above the threshold in paragraph (c)(1) of this section, shall ensure that the procedures at 10.002(b)(1) involve a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a project labor agreement, and to understand the availability of unions, and unionized and non-unionized contractors. Contracting officers may coordinate with agency labor advisors, as appropriate.”

# EO 14063 FINAL RULE OVERVIEW

***Q: Who is the senior procurement official that grants the PLA exception, exactly?***

***A:*** “FAR 2.101 identifies the senior procurement executive as the responsible official for management direction of the acquisition system in an executive agency ([41 U.S.C. 1702\(c\)](#)).”

***Q: What is the procedure for a senior procurement official to grant the PLA exception?***

***A:*** “The new procedures require the contracting officer to prepare a written explanation to request an exception and route the request for approval by the senior procurement executive.”

***Q: Will exemptions be posted for public review?***

***A:*** Yes. “The final rule implements section 6 of the E.O., which requires agencies to publish data and descriptions of the waivers granted on a centralized public website by the solicitation date to the extent permitted by law and consistent with national security and executive branch confidentiality interests.” Public shaming of contracting officers/agencies and research on non-PLA projects is a likely outcome.

# EO 14063 FINAL RULE OVERVIEW

***Q: Can agencies mandate a PLA on a project less than \$35m?***

***A: Yes, under certain circumstances. There are six factors agencies may consider:***

- “(i) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.***
- (ii) There is a shortage of skilled labor in the region in which the construction project will be sited.***
- (iii) Completion of the project will require an extended period of time.***
- (iv) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.***
- (v) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.***
- (vi) Any other factors that the agency decides are appropriate.”***

# EO 14063 FINAL RULE OVERVIEW

## PLA Mechanics and Content

- ☐ Federal agency PLA determination must be set prior to publication of the federal agency solicitation.
- ☐ Final rule permits federal agencies to require submittal of PLA with an offer, prior to award, or after award. (All have pitfalls).
- ☐ Only employers and unions (not the government) may negotiate/execute the PLA.
- ☐ Employers may negotiate and execute a PLA with any union, not just construction trade unions/members of NABTU.
- ☐ PLA applies to general contractor and subcontractors.
- ☐ Terms of PLA may vary, but there are minimum requirements.





# EO 14063 FINAL RULE LITIGATION

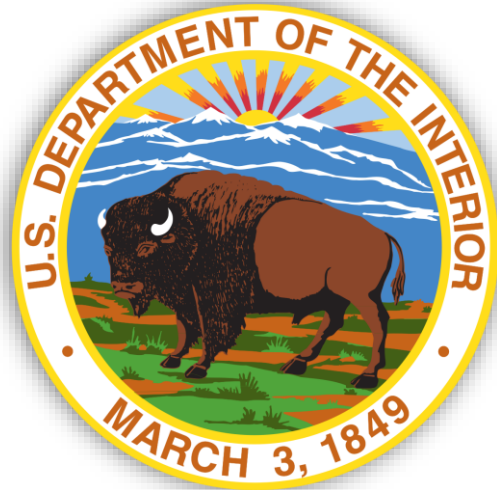
## Federal Agency PLA Survey Response Strategy

- ☐ Prepare list of ABC federal prime contractors and subcontractors to help facilitate participation in the federal agency PLA surveys/research.
- ☐ ABC National will help: [NoPLASfed@abc.org](mailto:NoPLASfed@abc.org)

## Litigation Strategy

- ☐ AGC lawsuit filed Jan. 10 in 5<sup>th</sup> Circuit in Western Louisiana U.S. District Court
- ☐ ABC Litigation Strategy
- ☐ GAO Bid Protests

# BIDEN PUSHES PLAS ON AT LEAST \$260B+ OF FEDERALLY ASSISTED PRIVATE, STATE AND LOCAL CONSTRUCTION



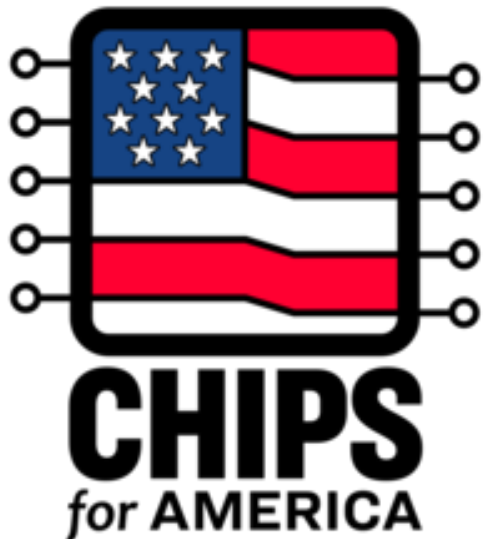
- **Track federal pro-PLA policies at [ABC.org/PLAgrants](https://www.abc.org/PLAgrants)**
- Treasury pushing PLAs on \$350B of ARPA money for water, sewer and broadband.
- USDA's Rural Utilities Service pushing PLAs on state and local rural applicants for broadband infrastructure projects.
- Many USDOT grant programs encourage and give extra credit to applicants committing to GMPLAs.
- Interior promoting PLAs on offshore wind.
- Commerce pushing PLAs on broadband and private CHIPS manufacturing.
- Inflation Reduction Act/IRS pushing PLAs on clean energy.
- White House Task Force on Unions indicates more to come.

**WHITE HOUSE  
TASK FORCE ON  
WORKER  
ORGANIZING AND  
EMPOWERMENT**

REPORT TO THE PRESIDENT



# WHITE HOUSE PUSHES, BUT DOES NOT REQUIRE, PROJECT LABOR AGREEMENTS ON CHIPS ACT FUNDING



- Roughly \$50 billion in federal assistance for U.S. semiconductor manufacturers via CHIPS Act.
- CHIPS for America Office created by the Department of Commerce.
- Its first Notice of Funding strongly encourages, **but does not require**, applicants to mandate PLAs.
- Page 55 of the NOFO offers PLA Alternative in its Construction Workforce Plan's "project workforce continuity plan," detailing workforce development, labor unrest mitigation, jobsite safety and worker pay policies to "timely deliver" the project.
- Similar push for federal grant recipients to mandate PLAs (but no requirements) under IIJA, Inflation Reduction Act clean energy tax incentives and other programs.
- Track federal pro-PLA policies at [ABC.org/PLAgrants](https://www.abc.org/PLAgrants).
- ABC chapters offer more than 450 government-registered apprenticeship programs at [www.abc.org/GRAPmap](https://www.abc.org/GRAPmap).



# IRA CLEAN ENERGY TAX CREDITS

## IRS/Treasury Inflation Reduction Act Labor Policies

- ☐ Unprecedented expansion of labor policy via federal tax incentives on private clean energy construction projects.
- ☐ Applies to construction, alteration or repair of solar, wind, hydrogen, carbon sequestration, electric vehicle charging stations and other clean energy projects.
- ☐ Slashes traditional tax credits from 30% to 6%.
- ☐ Replaced with baseline credit of 6% and new bonus rate of 30% (5x base rate).
- ☐ Bonus rate can only be achieved if developers meet Davis-Bacon and government-registered apprenticeship requirements for most programs.
- ☐ Effective Jan. 29, 2023, 60 days after IRS/Treasury guidance.
- ☐ IRS/Treasury Aug. 2023 NPRM PLA coercion: Significant willful PWA penalties ***waived if owner requires a PLA.***
- ☐ ABC submitted 54-page comment letter Oct. 30, 2023.
- ☐ ABC and government IRA resources available at [abc.org/IRA](https://abc.org/IRA).



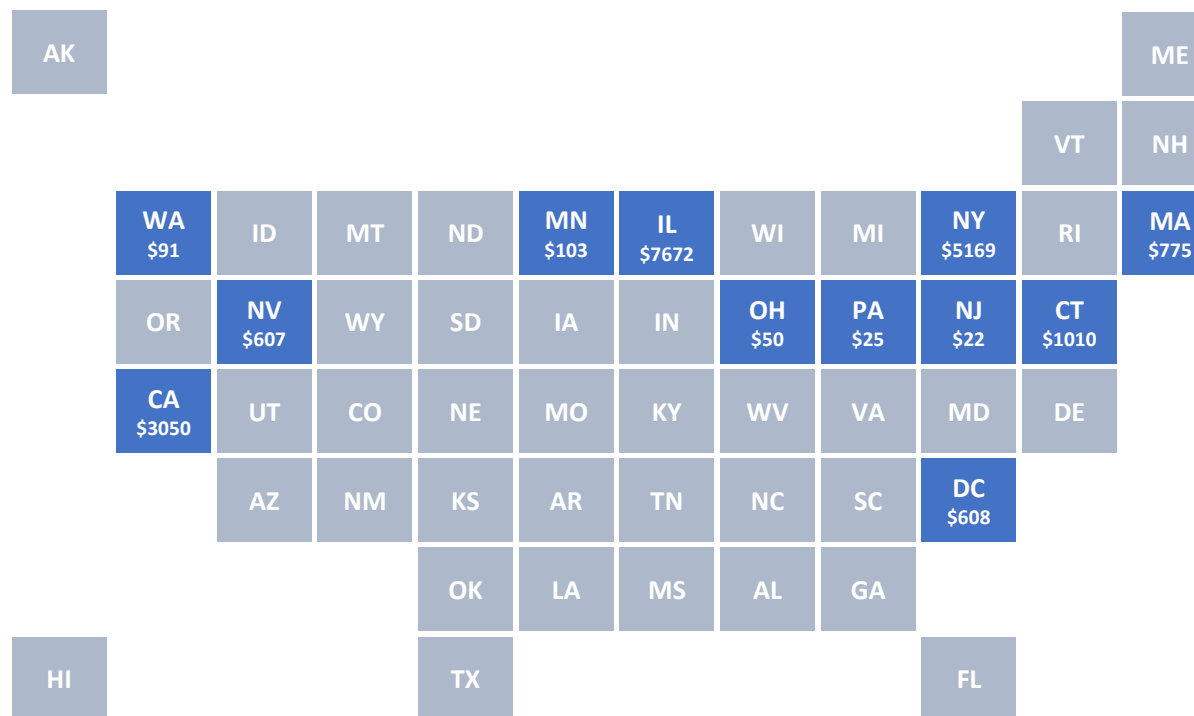
# FEDERALLY ASSISTED PLA MANDATE CONTRACTS

## 732 U.S. DOT FHWA-approved PLA mandates on state and local construction contracts

May 2010-Jan. 27, 2023, estimated cost of contracts, in millions of USD

Estimated value from 656 state projects: **\$19.18B**  
Estimated value from 76 Chicago projects: **\$871.9M**  
**Total: \$20.05B**

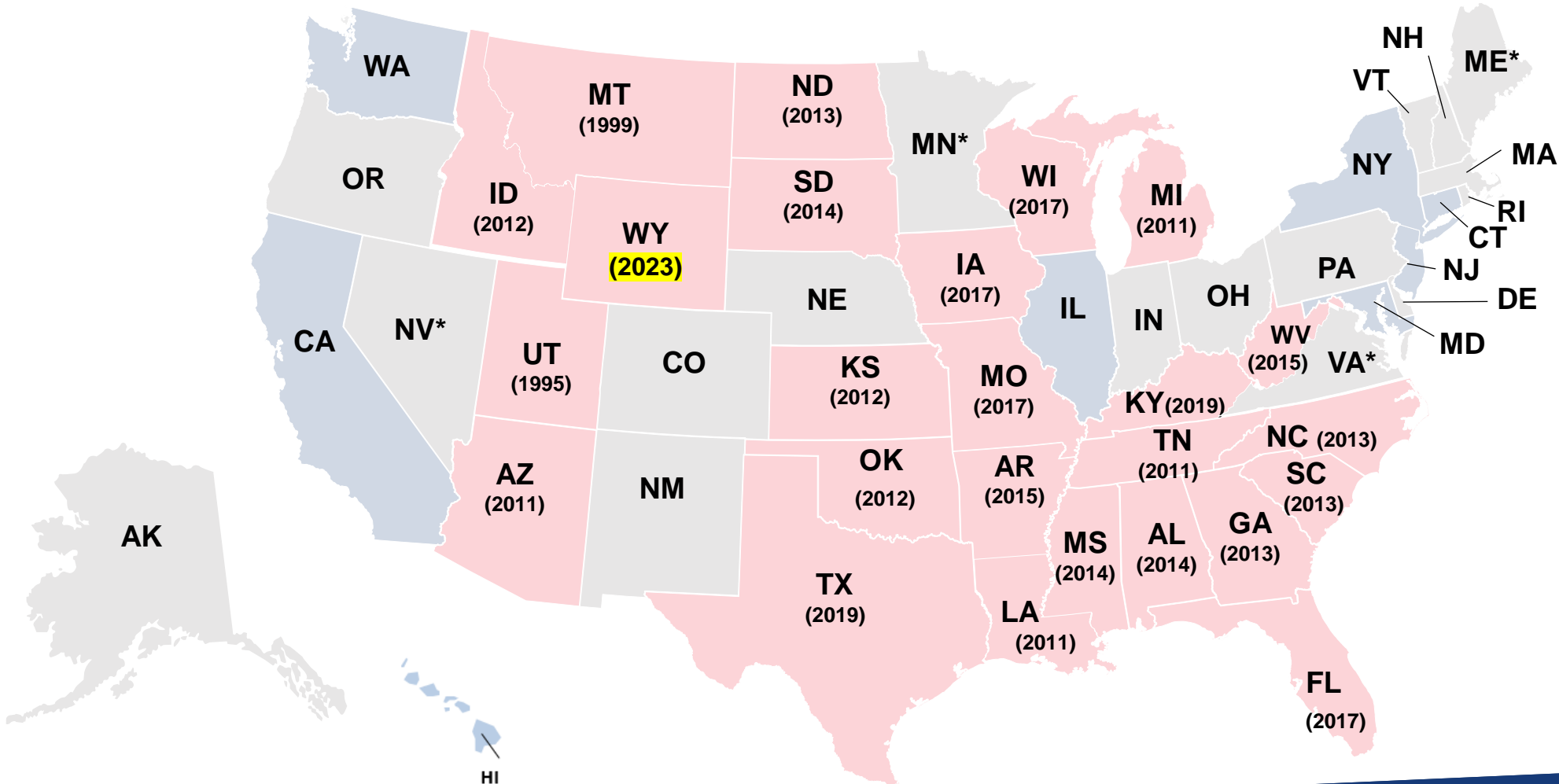
**IL, NY and CA spent the most money** on federally assisted projects subject to government-mandated project labor agreements



\*Cost amounts based on U.S. DOT FHWA data May 2010 through Feb. 13, 2023, FOIA response received March. 6, 2023;  
project count includes total contracts approved by FHWA, project cost estimates from FHWA data.

# 25 STATES ENSURE FAIR AND OPEN COMPETITION

- No policy prohibiting or encouraging use of PLAs ■ Enacted pro-PLA bill or EO encouraging government-mandated PLAs
- Enacted bill or EO prohibiting government-mandated PLAs (year enacted) \*Policy prohibiting government-mandated PLAs rescinded





**State and Local Construction Capital Outlays: U.S. Census Bureau**

**Legend:**

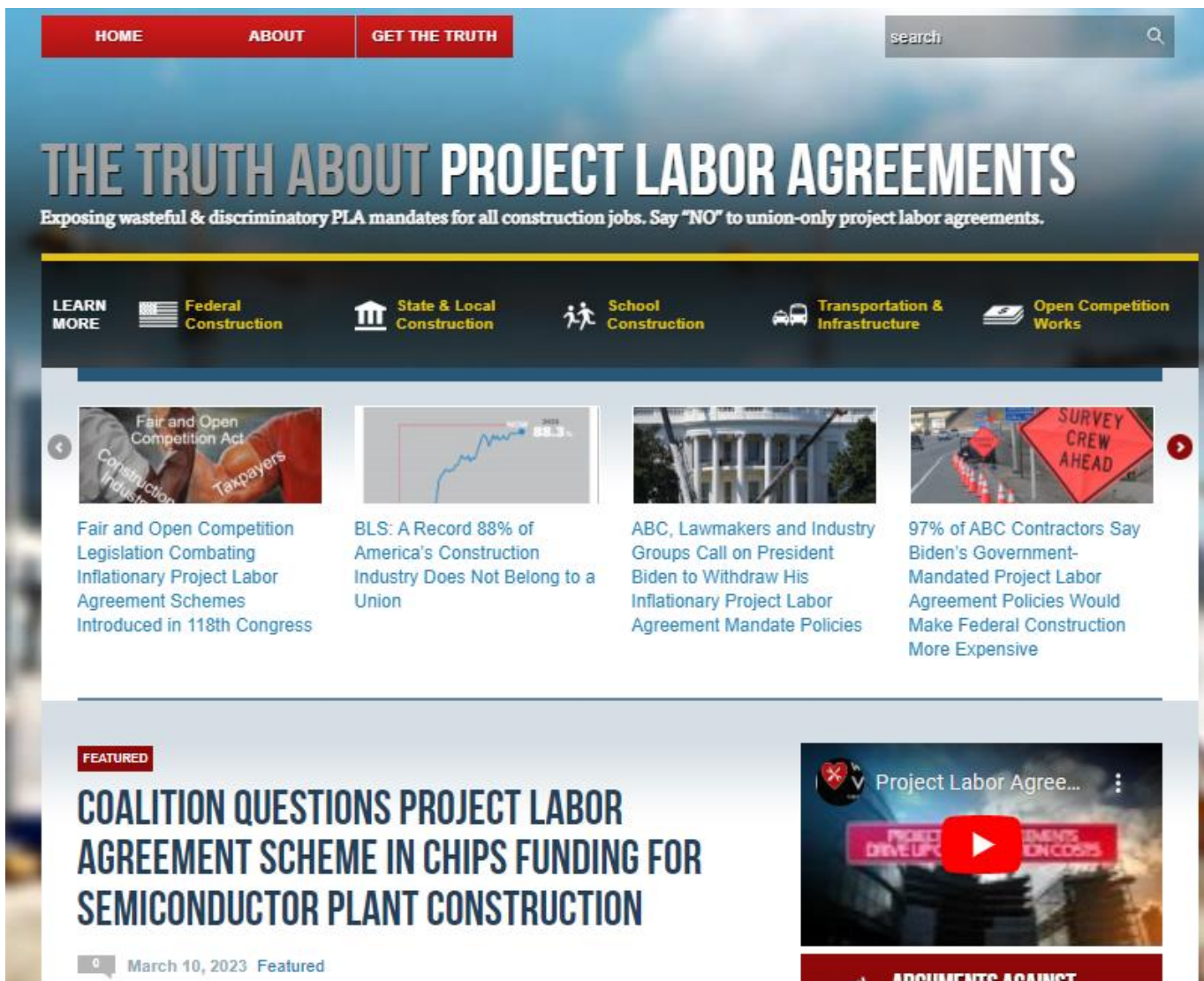
- Total prot gov PLA  $\geq 1.0\%$  (Blue)
- Total prot gov PLA  $0.5\% - 1.0\%$  (Orange)
- Total prot gov PLA  $< 0.5\%$  (Grey)

**State Data (Year, Percentage):**

State	Year	Percentage
WA		
OR		
CA		
NV		
WY	1999	\$17.91
CO	1995	\$54.55
NM	2011	\$51.35
MT	2013	\$18.83
ND	2014	\$12.69
NE	2012	\$28.59
KS	2012	\$37.94
OK	2019	\$135.57
TX	2011	\$48.51
MO	2015	\$31.22
IL	2011	\$44.65
IN	2011	\$33.10
OH	2011	\$63.92
PA	2011	\$38.42
VA	2015	\$11.27
NC	2019	\$45.74
SC	2013	\$11.23
GA	2013	\$39.01
FL	2017	\$85.19
AL	2013	\$74.62
MS	2013	\$70.72
LA	2014	\$28.73
TX	2014	\$13.99
MD	2015	\$55.47
DE		
NJ		
CT		
RI		
MA		
NH		
VT		
ME		
NY		
HI		

Total capital outlay  
protected in 2022: **\$154.96  
billion**






HOME ABOUT GET THE TRUTH search

# THE TRUTH ABOUT PROJECT LABOR AGREEMENTS

Exposing wasteful & discriminatory PLA mandates for all construction jobs. Say "NO" to union-only project labor agreements.


LEARN MORE

- Federal Construction
- State & Local Construction
- School Construction
- Transportation & Infrastructure
- Open Competition Works




Fair and Open Competition Act  
Construction Industry Taxpayers


Fair and Open Competition Legislation Combating Inflationary Project Labor Agreement Schemes Introduced in 118th Congress



BLS: A Record 88% of America's Construction Industry Does Not Belong to a Union



ABC, Lawmakers and Industry Groups Call on President Biden to Withdraw His Inflationary Project Labor Agreement Mandate Policies



97% of ABC Contractors Say Biden's Government-Mandated Project Labor Agreement Policies Would Make Federal Construction More Expensive

FEATURED

## COALITION QUESTIONS PROJECT LABOR AGREEMENT SCHEME IN CHIPS FUNDING FOR SEMICONDUCTOR PLANT CONSTRUCTION

0 March 10, 2023 Featured

Project Labor Agree...

PROJECT DRIVE UP COSTS

ARGUMENTS AGAINST

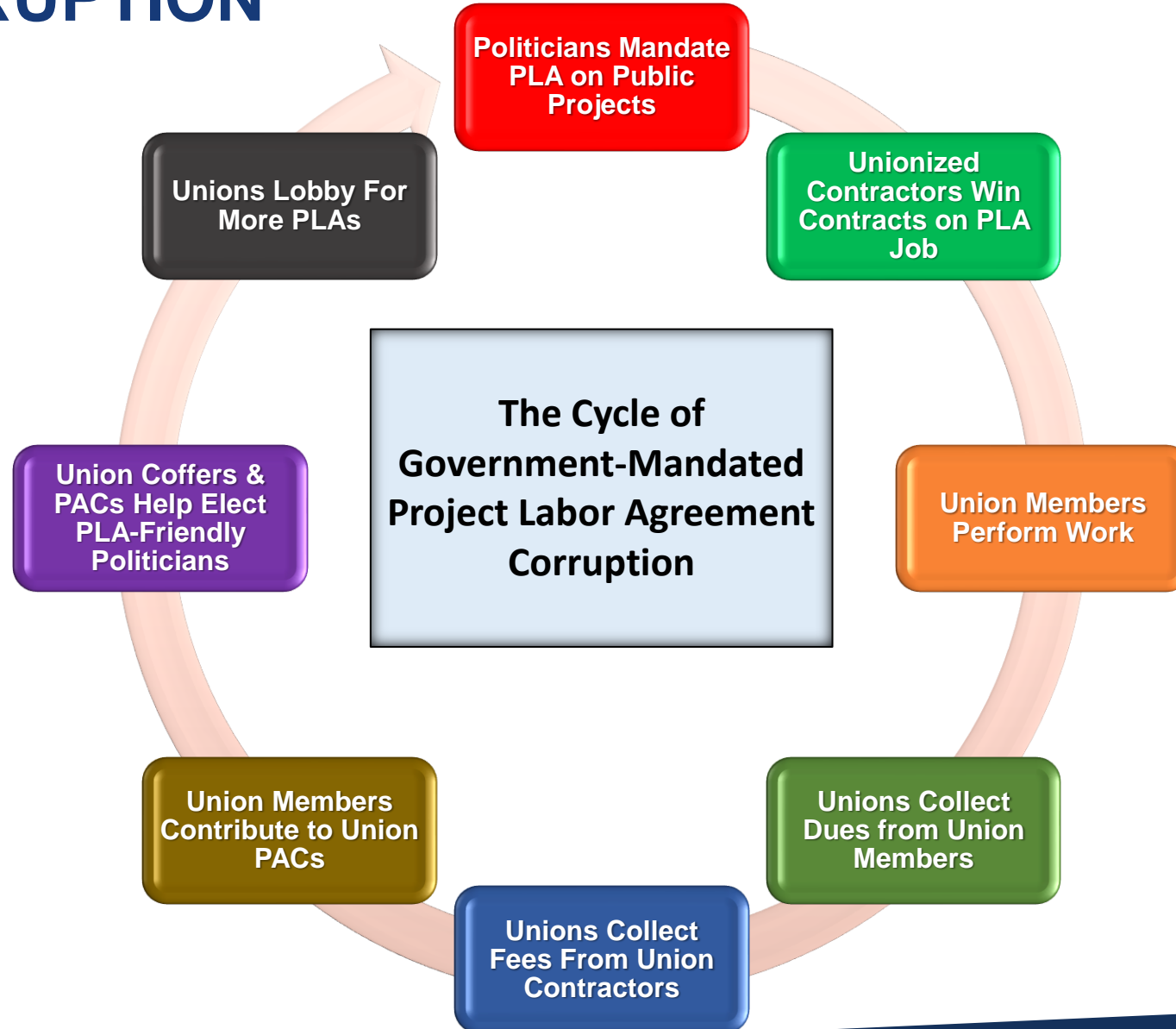
Facebook.com/TheTruthAboutPLAs  
Twitter: @TruthAboutPLAs



# **GMPLAs: A Political Problem**



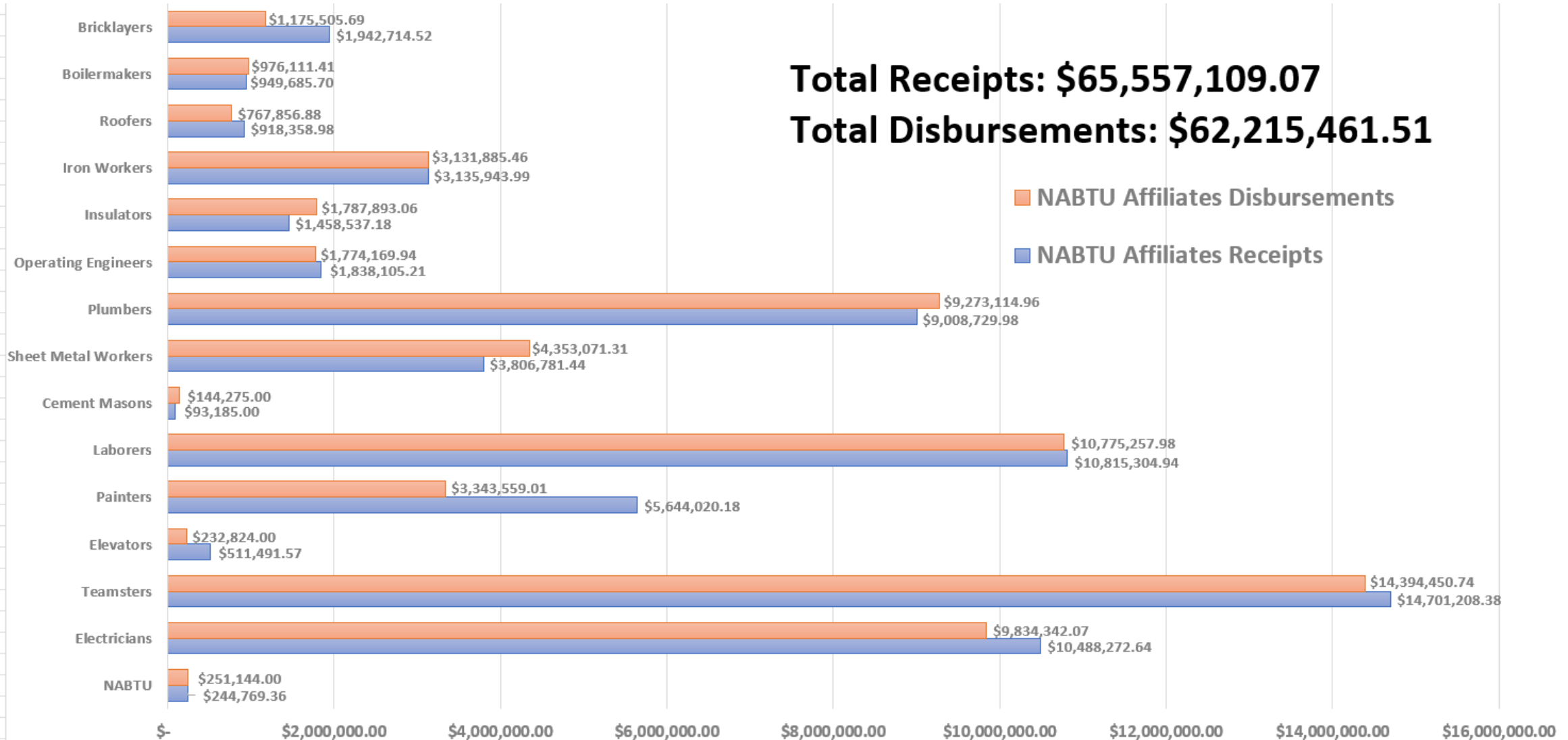
# THE CYCLE OF GOVERNMENT-MANDATED PLA CORRUPTION





# 2021-2022 NABTU-AFFILIATED UNIONS FEDERAL PAC FINANCIAL SUMMARY

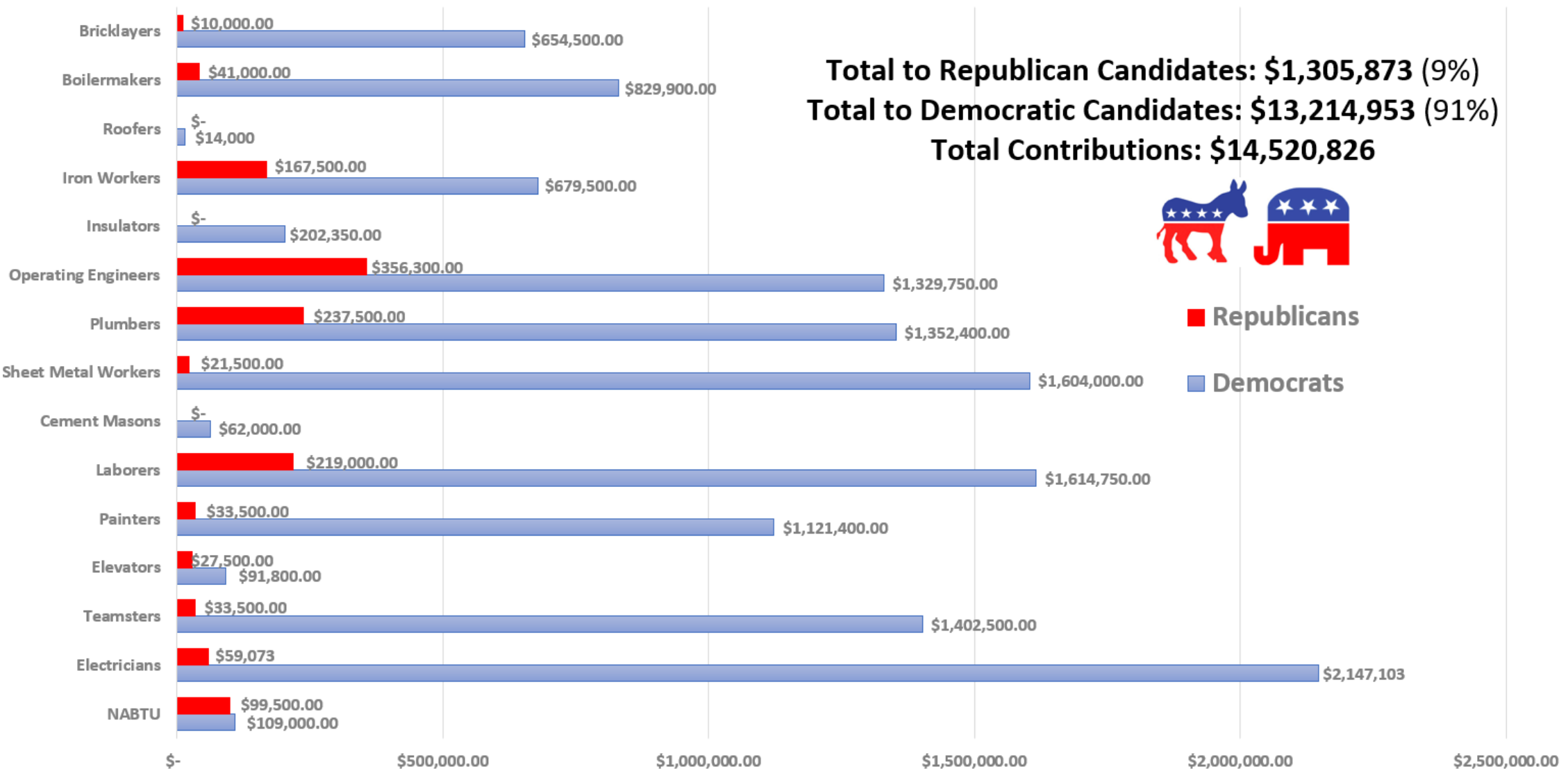
Case 6:24-cv-00087-DCJ Document 32-11 Filed 02/28/24 Page 49 of 58 Page ID #: 1012





# 2021-2022 NABTU-AFFILIATED UNIONS' FEDERAL PAC GIVING

Case 6:24-cv-00037-DCJ Document 12-11 Filed 02/28/24 Page 50 of 58 PageID #: 1073



# How Can You Fight for Fair and Open Competition?




## ACTION ITEMS

- ✓ Educate employees, peers and industry leadership. Elections matter!
- ✓ Ask your lawmakers to cosponsor the Fair and Open Competition Act (H.R. 1209/S. 537), introduced by Rep. James Comer, R-Ky., and Sen. Todd Young, R-Ind. In the 118<sup>th</sup> Congress, restricting government-mandated PLAs on federal and federally assisted construction projects.
- ✓ ABC [grassroots alert](#):
- ✓ Arrange lawmaker visits to jobsites or industry events.
- ✓ Encourage federal contractors to complete federal agency PLA surveys to determine if a PLA is appropriate for a large-scale federal project. Utilize templates and alerts circulated by ABC National/chapters as PLA mandates are possible before EO final rule issued.
- ✓ Educate the public, industry peers, stakeholders and employees about this threat using ABC resources.
- ✓ Download the ABC Action app, ABC's easy-to-use grassroots advocacy tool.

**Contact Your Legislator**

# DOWNLOAD THE ABC ACTION APP



**DOWNLOAD THE ABC ACTION APP TODAY!**

- One-click messaging to your elected officials
- Instant notifications for grassroots and legislative alerts
- Voting history on key ABC issues
- Detailed contact information for your federal representatives
- State-specific lawmaker and policy information



The ABC Action app for iPhone, iPad and Android  
Download it on your device at [abc.org/action](https://abc.org/action).



# ABC/FEA SUPPORTING FOCA AND FIGHTING PLAS

[FreeEnterpriseAlliance.org/FOCA](https://FreeEnterpriseAlliance.org/FOCA)

## Support the Fair and Open Competition Act

The Fair and Open Competition Act, H.R. 1284 /S. 403, would prevent federal agencies and recipients of federal assistance from requiring contractors to sign controversial project labor agreements as a condition of winning a federal or federally assisted construction contract. This bill would ensure that taxpayer-funded construction contracts are awarded through fair and open competition—guaranteeing the best value for hardworking taxpayers while prohibiting a rigged federal procurement process that discriminates against many small construction businesses.

A PLA is a project-specific collective bargaining agreement with multiple unions that is unique to the construction industry. When a PLA is mandated by a government agency, construction contracts can be awarded only to contractors and subcontractors that agree to the terms and conditions of the PLA. PLAs effectively prevent **87.3%** of the U.S. construction workforce that chooses not to join a labor union from fairly competing for contracts to build taxpayer-funded projects on a level playing field. Further, government-mandated PLAs discourage the vast majority of small, women-, minority- and veteran- owned businesses from competing on projects.


Not only do contracts subject to government-mandated PLAs drive up the cost of critical infrastructure projects but they also drive-up the cost of critical infrastructure projects taxpayers can't afford government-mandated PLAs that significantly increase the cost of critical infrastructure projects to taxpayers to pay more and get less.

While FOCA would prohibit federally mandated PLAs and ensure the procurement of taxpayer-funded construction projects, it would ensure that taxpayer-funded construction projects are awarded to businesses that **voluntarily** enter into a PLA.



### FOCA Fact Sheet

The Fair and Open Competition Act would prevent the government from mandating discriminatory and costly Project Labor Agreements as a condition of winning federal or federally assisted construction contracts.

DOWNLOAD HERE 



## Fair and Open Competition Act

Ask your representatives to support the Fair and Open Competition Act!

[CONTACT YOUR REPRESENTATIVES →](#)



**PROJECT LABOR AGREEMENTS:**

- ✗ Force hard working taxpayers to pay more and get less.
- ✗ Discriminate against 87.3% of the U.S. construction workforce.
- ✗ Increase the cost of infrastructure projects by 12% to 20%.



**THE FAIR AND OPEN COMPETITION ACT**

- ✓ Creates more local construction industry jobs
- ✓ Guarantees the best value for hardworking taxpayers
- ✓ Allows the market to determine if a PLA is appropriate

[DOWNLOAD OUR SOCIAL MEDIA KIT !\[\]\(62acd955ae780b710b1eae66e386f9e5\_img.jpg\)](#)

*Available Resources: ABC action alert, fact sheet, social media kit, paycheck stuffers, articles, email sign-ups, donate button and more.*

## **ADDITIONAL ACTION ITEMS**

- ✓ **ABC grassroots action alerts targeting White House and Congress.**
- ✓ **Engage federal contracting officers and governors/state lawmakers.**
- ✓ **Consider participating in future legal action.**
- ✓ **Respond to calls to action to testify or give media interviews on this topic.**
- ✓ **Share examples of poor PLA projects and exemplary merit shop projects in your market.**
- ✓ **Fundraise for ABC's fight against PLA mandates.**
- ✓ **Pass state/local FOCA law if you have not done so already.**
- ✓ **Get into politics or get out of business! Elections matter.**

# ABC REGULATORY ROUNDUP



**Stay informed about federal regulations affecting  
public and private construction projects.  
Visit [www.abc.org/regroundup](http://www.abc.org/regroundup)**

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